REMARKS

By way of summary, Claims 1-78 were originally filed in the present application. Claims 79-88 were previously added. Claims 44-60 and 84-86 were previously canceled and Claims 61-78 are canceled herein. Claims 4-5, 35-38, and 87-88 were previously withdrawn. Claim 1 is amended herein and Claims 89 is newly added. Accordingly, after entry of the foregoing amendments, Claims 1-43, 79-83, and 87-89 will be pending for further consideration by the Examiner.

Rejections based on Keren and Wampler

Claims 1-3, 6-7, 10-34, 39-43, and 79-83 stand rejected under 35 U.S.C. § 103(a) as being unpatentable in over U.S. Patent No. 6,749,598 to Keren et al. ("Keren") alone or alternatively in view of U.S. Patent No. 4,625,712 to Wampler ("Wampler"). Applicant does not agree with these rejections, but has made certain amendment to expedite allowance. The Office Action refers to Keren's teaching in connection with Figure 3, and also the positioning of the "inlet end" in the aorta as mentioned in the Abstract. However, these teachings of Keren are not anticipatory or sufficient to render obvious the limitations of amended Claim 1.

In contrast to the present claims, Keren teaches away from at least the limitations in connection with the "positioning member", such as:

> a positioning member having a distal end, a proximal end, and ***a body extending therebetween, the distal end coupled with [a] pump to generally maintain the position of the pump relative to a point of access to the vasculature during operation of the pump***, the body having a length such that the proximal end is located outside the vasculature in use;
>
> whereby the pump, the positioning member, and the inflow and outflow portions are configured so as to be inserted subcutaneously into the vasculature in a minimally-invasive procedure.

To the contrary, Keren teaches in connection with Figure 3 that the position of the catheter is maintained by a structure within a renal artery. For example, Keren teaches "[e]ngagement means, such as small ribs or barbs 38 [that] also may be disposed on the exterior surface of branch conduit 36 ***to retain the branch conduit in the renal artery***." Keren at 3:58-61. Keren also teaches self-expanding or inflatable occluders for maintaining position. See Keren at 4:27-45. Keren describes omitting these structures if there is proper sizing of the branch conduit relative to the renal artery, presumably where the distal end itself engages the inside surface of the renal artery. See Keren at 4:51-54. Keren further teaches that structures for advancing the implantable pump 43 within the vasculature are not part of the pumping system and are not in the vasculature during operation. See Keren at 4:62 (describing the use of a "push tube (not shown) disposed on the guidewire 100" for advancing the Keren system). Indeed such structures are not shown at all when the catheters of Keren are illustrated as applied to the patient. See Keren, Figure 1.

The Office action asserts that "to have provided a grasping device for positioning and manipulating the catheter 30 in the aorta as [sic, and in the] renal artery would have been obvious in view of Keren et al. alone." Page 2. Although Keren mentions such a structure in connection with the push tube, Keren suggests removing this device during use of the renal catheters disclosed therein. Such a device is apparently not needed because of the use of the structures disposed within one or more renal arteries to maintain position of the catheters.

Keren mentions using an "external blood pump" where the inlet end is disposed in a peripheral, e.g., femoral artery. However, an external blood pump would clearly not be positioned and operated within the vasculature, as claimed in this application.

Wampler describes a high-capacity blood pump utilizing percutaneous access. Although this type of pump may be delivered through the vasculature, it is not positioned and operated within the vasculature of a patient. In particular, the pump of Wampler is configured to be placed within the heart. Wampler at 2:31-35; Figures 1a-1b. Wampler describes a pumping means that is at least partially extracorporeal. In Wampler, at least a drive cable is extended outside the patient. Such a system would be applicable if at all to the application of the Keren device whereby the inlet is in a femoral artery. Even this combination would not describe all the limitations of Claim 1, as amended.

For all of these reasons, Keren alone or in combination with Wampler would not render amended Claim 1 obvious. The remaining claims that are not withdrawn and that are rejected based on Keren and Wampler depend from Claim 1 and are allowable for at least the same reasons that Claim 1 is allowable.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Conclusion

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Final Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney to resolve such issue(s) promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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